

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

02 OCT 16 AM 11:51

SOUTH CAROLINA

IN RE:

Rodney Nichols,

Debtor.

**ENTERED**  
**OCT 17 2002**  
**K. E. P.**

No. 01-08856-W

**ORDER**

Chapter 13

THIS MATTER comes before the Court upon the Petition to Dismiss filed by the Chapter 13 Trustee based upon the failure to perform the confirmed Plan by Rodney Nichols ("Debtor"). Debtor's Plan, filed on October 31, 2001 and confirmed on November 16, 2001, includes the following terms in the section dictating the funding of the Plan:

The Debtor shall attempt to sell the real properties located at Crawford and Anne Streets for eighteen (18) months, with any excess proceeds of said sale - beyond satisfaction of the mortgages, costs of sale, and any liens of record - to be paid directly to the Trustee.

Despite the Plan's provision, Debtor never attempted to sell the properties and failed to object to a Motion for Relief from Stay filed by First Family Financial Services, Inc., the first mortgage creditor on the properties. The Motion was granted, resulting in an Order Granting Relief from the Stay on December 27, 2001. As the result of the relief, the properties were later foreclosed upon and sold.

The Trustee argues that because Debtor has not and cannot perform this provision of the confirmed Plan, the case must be dismissed. Debtor argues that his intention to sell the properties was based upon a mistaken belief that there was value in those properties to benefit the estate. Further, Debtor argues that the Chapter 13 Trustee failed to protect the estate's interest in the properties, if there were any, by his failure to object to First Financial's Motion for Relief

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from the Stay.

The parties stipulate that Debtor made no attempt to sell the properties either himself or through the services of a realtor. As such, Debtor failed to perform according to the clear and express language of his Plan. It is equally clear that, because the properties are no longer part of the estate, Debtor cannot perform the requirement in the future. Because it appears confirmation was based upon the agreement that the subject language be included in the Plan and Debtor did not seek to modify his Plan before the stay was lifted and the properties were foreclosed, the Court finds that there has been a material default with respect to a term of the confirmed Plan.

Therefore, pursuant to 11 U.S.C. §1307(c), the Trustee's Motion is granted and the case is dismissed.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
October 16, 2002.

  
UNITED STATES BANKRUPTCY JUDGE



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**York County Real Estate Tax Information**

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Tax Receipt Number: **865967015**  
Tax Year: **2001**

Status: **UNPAID**  
Paid Date:

Mailing Address: **NICHOLS RODNEY**  
**218 RIDLEY ST**  
**ROCK HILL S C 29730**

Map Number: **670-00-00-166**  
Appraised: **\$ 87700**  
Assessment: **\$ 3508**  
Net Taxes: **\$ 566.95**  
Description: **LOTS 53 & 54**

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**Return**

Developed By Calvin Consulting Inc., 2001

*Property: 218 Ridley St.*



**York County Real Estate Tax Information**

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Tax Receipt Number: **060863013**  
Tax Year: **2001**

Status: **PAID**  
Paid Date: **09/13/02**

Mailing Address: **NICHOLS RODNEY T**  
**218 RIDLEY ST**  
**ROCK HILL S C 29730**

Map Number: **670-00-00-055**  
Appraised: **\$ 43500**  
Assessment: **\$ 2610**  
Net Taxes: **\$ 734.87**  
Description: **LOTS 95,96,97 SUNRISE ACRES**

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**Renote**

Developed By Calvin Consulting Inc., 2001

*Property: 1457 Anne St.*



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**York County Real Estate Tax Information**

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Tax Receipt Number: 060862013

Tax Year: 2001

Status: PAID

Paid Date: 09/13/02

Mailing Address: NICHOLS RODNEY T \*\*\*\*\*RET MAIL\*\*\*\*

728 CRAWFORD ROAD

ROCK HILL SC 29730

Map Number: 600-12-03-013

Appraised: \$ 11500

Assessment: \$ 690

Net Taxes: \$ 293.44

Description: W SIDE CRAWFORD ROAD

RIL LTR RTND

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[Return](#)

Developed By Calvin Consulting Inc., 2001

Property: 728 Crawford Road

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

(BNC)  
OCT 17 2002

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

KIRK E. PORTH

Deputy Clerk

- All Parties